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**ATTORNEYS FOR DEFENDANT
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

TYLER HEADDRESS, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CV 20-36-GF-BMM DEFENDANT'S ANSWER TO COMPLAINT
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Defendant United States of America, by and through Assistant U.S. Attorneys John M. Newman and Victoria L. Francis, hereby answers Plaintiff's Complaint as follows: The paragraph numbering below corresponds to the numbering in the Complaint.

1. The United States lacks knowledge or information sufficient to form a belief regarding the allegations of this paragraph, and therefore denies them.

2. The allegations of jurisdiction do not require a response. To the extent a response is deemed required, The United States denies the allegations of this paragraph.

3. The United States admits that United States District Courts generally have exclusive subject matter jurisdiction over claims arising under the Federal Tort Claims Act.

4. The United States admits that Plaintiff submitted a Standard Form (SF) 95 dated September 1, 2019, and that the Bureau of Indian affairs received Plaintiff's administrative claim on October 22, 2019. The United States further admits that it denied Plaintiff's claim on April 30, 2020. The remaining allegations of this paragraph contain statements of either law or jurisdiction, which do not require a response. To the extent a response is deemed required, The United States denies the remaining allegations of this paragraph.

5. The United States admits the allegations of this paragraph.

6.–26. The United States lacks knowledge or information sufficient to form a belief regarding the allegations of these paragraphs, and therefore denies them.

27.–33. The United States denies the allegations of these paragraphs.

34. The allegations of this paragraph contain legal conclusions which do not require a response. To the extent a response is deemed required, The United States denies the allegations of this paragraph.

35.–36. The United States denies the allegations of this paragraph.

The United States denies the three numbered paragraphs of Plaintiff's Prayer for Relief.

The United States denies each and every allegation not specifically denied or addressed above.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

2. The United States, through its employees and agents, acted with due care and diligence at all relevant times.

3. Plaintiff's injuries, damages, and losses, if any, are barred or reduced according to principles of comparative negligence and apportionment under

Montana Code Annotated §§ 27–1–702 and 27–1–703, and to the extent Plaintiff failed to mitigate his damages.

4. The United States cannot be held liable under the Federal Tort Claims Act for the negligence of non-federal-government entities, employees, and/or providers, which may have caused or contributed to any injury experienced by Plaintiff.

5. Plaintiff may not recover attorney’s fees, nor is he entitled to a jury trial, under the Federal Tort Claims Act. 28 U.S.C. §§ 2402, 2678.

6. Plaintiff’s recovery is limited to the damages recoverable under the Federal Tort Claims Act. See 28 U.S.C. §§ 2674, 2675(b).

The United States reserves the right to plead all other affirmative defenses or any state and/or federal statutes which through discovery may become applicable, and to amend this Answer to amend or withdraw any or all of them.

WHEREFORE, the United States requests Plaintiff take nothing by way of the Complaint, that this suit be dismissed with prejudice, and for such other and further relief as the Court deems just and appropriate.

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DATED this 18th day of June, 2020.

KURT G. ALME
United States Attorney

/s/ JOHN M. NEWMAN
Assistant U.S. Attorney
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June, 2020, a copy of the foregoing document was served on the following person by the following means.

<u>1-2</u>	CM/ECF
<u> </u>	Hand Delivery
<u> </u>	U.S. Mail
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u> </u>	E-Mail

1. Clerk of Court

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